

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) and/or 8(5), in conjunction with Article 53(1)(a) of Council Regulation (EC) No 207/2009.

Action brought on 21 August 2013 — Sea Handling v Commission

(Case T-456/13)

(2013/C 298/17)

Language of the procedure: Italian

Parties

Applicant: Sea Handling SpA (Somma Lombardo, Italy) (represented by: B. Nascimbene and M. Merola, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the contested decision, by which the Commission refused to grant SEA Handling SpA access to the documents sought by the request of 27 February 2013;
- direct the Commission to allow the applicant to have sight of the requested documents;
- order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant contests the Commission's decision refusing to grant that company access to the documents in the Commission's possession relating to the administrative procedure which had culminated in the adoption of the Commission decision of 19 December 2012 concerning the capital injections made by SEA SpA to SEA Handling SpA (Case SA.21420 — Italy/SEA Handling).

In support of its action, the applicant relies on five pleas in law.

1. First plea in law: breach of procedural rules.

- The applicant submits in that regard that the Commission has infringed Articles 7(1) and (3) and 8(1) and (2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), as well as Articles 41 and 47 of the Charter of Fundamental Rights of the European Union, since (i) the procedure which culminated in the contested decision was characterised by periods during which communi-

cation ceased without explanation and by inadequately explained postponements and (ii) the failure to meet deadlines impacted on the applicant's rights of defence.

2. Second plea in law: infringement of Article 4(2) of Regulation No 1049/2001.

- The applicant submits in that regard that the contested decision is vitiated by manifest error of assessment and by a breach of the obligation to state reasons, in so far as it is presumed that granting access to the documents would adversely affect the Commission's investigations, as well as those investigations which have already come to a close, but no specific information is given as to how exactly those investigations would be adversely affected.

3. Third plea in law: infringement of Article 4(2) of Regulation No 1049/2001.

- The applicant submits in that regard that the contested decision is vitiated by manifest error of assessment and by a breach of the obligation to state reasons, in so far as the finding is made in that decision that granting access to the documents would adversely affect the commercial interests of the complainant, but no explanation is given as to what those interests might be, thereby undermining the State aid review procedure by equating private interests with the public interest in the proper conduct of investigations and interpreting liberally the interests protected by Article 4(2) of Regulation No 1049/2001.

4. Fourth plea in law: infringement of Article 4(6) of Regulation No 1049/2001 and breach of the principle of proportionality.

- The applicant submits in that regard that the contested decision is also vitiated by the failure to consider the possibility of granting the applicant partial access to the requested documents.

5. Fifth plea in law: infringement of Article 4(2) and (3) of Regulation No 1049/2001 and breach of the principle of proportionality, read in conjunction with Article 42 of the Charter of Fundamental Rights of the European Union.

- The applicant submits in that regard that the contested decision is also vitiated by the failure to distinguish between the exceptions applied and the public interest. In particular, the Commission refused access to the documents without taking into consideration the existence of an overriding public interest in disclosure of the requested documents, and without calculating the actual impact that such a disclosure would have on the commercial interests of third parties and on the investigations protected under Article 4(2) of Regulation No 1049/2001.